



State of Oklahoma  
Oklahoma State and Education  
Employees Group Insurance Board

Solicitation

1. Solicitation #: 66255

2. Solicitation Issue Date:

3. Brief Description of Requirement:

Individual or firm to provide Disability Fund actuarial consulting services per the attached request for proposal.

4. Response Due Date<sup>1</sup>: July 13, 2010

Time: 2.00 PM CST/CDT

5. Issued By and **RETURN SEALED BID TO<sup>2</sup>**:

Oklahoma State and Education Employees Group Insurance Board

- U.S. Postal Delivery:
- Carrier Delivery:

6. Solicitation Type (check one below):

- Invitation to Bid
- Request for Proposal
- Request for Quote

7. Shipping Location: N/A

8. Contracting Officer:

Name: Charles Clifford

Phone: 405-717-8737

Email: cclifford@sib.ok.gov

<sup>1</sup> Amendments to solicitation may change the Response Due Date (read GENERAL PROVISIONS, section 3, "Solicitation Amendments")

<sup>2</sup> If "U.S. Postal Delivery" differs from "Carrier Delivery", use "Carrier Delivery" for courier or personal deliveries



**State of Oklahoma  
Oklahoma State and Education  
Employees Group Insurance Board**

**Responding Bidder Information**

"Certification for Competitive Bid and Contract" (see page 3) **MUST** be submitted along with the response to the Solicitation

1. **RE: Solicitation #** 66255

2. **Bidder General Information:**

FEI / SSN : \_\_\_\_\_ VEN ID: \_\_\_\_\_

Company Name: \_\_\_\_\_

3. **Bidder Contact Information:**

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Contact Title: \_\_\_\_\_

Phone #: \_\_\_\_\_ FAX#: \_\_\_\_\_

Email: \_\_\_\_\_ Website: \_\_\_\_\_

4. **Oklahoma Sales Tax Permit<sup>3</sup>:**

YES – Permit #: \_\_\_\_\_

NO – Exempt pursuant to Oklahoma Laws or Rules

5. **Registration with the Oklahoma Secretary of State:**

YES - Filing Number: \_\_\_\_\_

NO - Prior to the contract award, the successful bidder will be required to register with the Secretary of State or must attach a signed statement that provides specific details supporting the exemption the supplier is claiming (<http://www.sos.ok.gov> or 405-521-3911).

6. **Workers' Compensation Insurance Coverage:**

Bidder is required to provide with the bid a certificate of insurance showing proof of compliance with the Oklahoma Workers' Compensation Act.

YES – include a certificate of insurance with the bid

NO - attach a signed statement that provides specific details supporting the exemption you are claiming from the Workers' Compensation Act (Note: Pursuant to Attorney General Opinion #07-8, the exemption from 85 O.S. 2001, § 2.6 applies only to employers who are natural persons, such as sole proprietors, and does not apply to employers who are entities created by law, including but not limited to corporations, partnerships and limited liability companies.)<sup>4</sup>

<sup>3</sup> For frequently asked questions concerning Oklahoma Sales Tax Permit, see <http://www.tax.ok.gov/faq/faqbussales.html>

<sup>4</sup> For frequently asked questions concerning workers' compensation insurance, see <http://www.ok.gov/oid/documents/WorkersComp.pdf>



**State of Oklahoma  
Oklahoma State and Education  
Employees Group Insurance Board**

**Certification for Competitive  
Bid and/or Contract  
(Non-Collusion Certification)**

*A certification shall be included with any competitive bid and/or contract submitted to the State for goods or services.*

Solicitation or Purchase Order #: 66255

Supplier Legal Name: \_\_\_\_\_

**SECTION I [74 O.S. § 85.22]:**

A. For purposes of competitive bid,

1. I am the duly authorized agent of the above named bidder submitting the competitive bid herewith, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to said bid;
2. I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such bid; and
3. Neither the bidder nor anyone subject to the bidder's direction or control has been a party:
  - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
  - b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
  - c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract.

B. I certify, if awarded the contract, whether competitively bid or not, neither the contractor nor anyone subject to the contractor's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this contract herein.

**SECTION II [74 O.S. § 85.42]:**

For the purpose of a contract for services, the supplier also certifies that no person who has been involved in any manner in the development of this contract while employed by the State of Oklahoma shall be employed by the supplier to fulfill any of the services provided for under said contract.

The undersigned, duly authorized agent for the above named supplier, by signing below acknowledges this certification statement is executed for the purposes of:

- the competitive bid attached herewith and contract, if awarded to said supplier;  
**OR**  
 the contract attached herewith, which was not competitively bid and awarded by the agency pursuant to applicable Oklahoma statutes.

Supplier Authorized Signature

Certified This Date

Printed Name

Title

Phone Number

Email

Fax Number

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## **A. GENERAL PROVISIONS**

### **A.1. Definitions**

As used herein, the following terms shall have the following meaning unless the context clearly indicates otherwise:

- A.1.1.** "Acquisition" means items, products, materials, supplies, services and equipment a state agency acquires by purchase, lease purchase, lease with option to purchase, or rental pursuant to the Oklahoma Central Purchasing Act;
- A.1.2.** "Bid" means an offer in the form of a bid, proposal or quote a bidder submits in response to a solicitation;
- A.1.3.** "Bidder" means an individual or business entity that submits a bid in response to solicitation;
- A.1.4.** "Solicitation" means a request or invitation by the State Purchasing Director or a state agency for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal, or a request for quotation; and
- A.1.5.** "Supplier" means an individual or business entity that sells or desires to sell acquisitions to state agencies.

### **A.2. Bid Submission**

- A.2.1.** Submitted bids shall be in strict conformity with the instructions to bidders, and shall be submitted with any other forms completed as required by the solicitation.
- A.2.2.** Bids shall be submitted to the procuring agency in a single envelope, package, or container and shall be sealed. The name and address of the bidder shall be inserted in the upper left corner of the single envelope, package, or container. SOLICITATION NUMBER AND SOLICITATION RESPONSE DUE DATE AND TIME MUST APPEAR ON THE FACE OF THE SINGLE ENVELOPE, PACKAGE, OR CONTAINER.
- A.2.3.** The required certification statement, "Certification for Competitive Bid and/or Contract (Non-Collusion Certification)", DCS-FORM-CP-004A, must be made out in the name of the bidder and must be properly executed by an authorized person, with full knowledge and acceptance of all its provisions.
- A.2.4.** All bids shall be legibly written or typed. Any corrections to bids shall be initialed. Penciled bids and penciled corrections shall NOT be accepted and will be rejected as non-responsive.
- A.2.5.** All bids submitted shall be subject to the Oklahoma Central Purchasing Act, Central Purchasing Rules, and other statutory regulations as applicable, these General Provisions, any Special Provisions, solicitation specifications, required certification statement, and all other terms and conditions listed or attached herein—all of which are made part of this solicitation.

### **A.3. Solicitation Amendments**

- A.3.1.** If an amendment is issued, then the bidder shall acknowledge receipt of any/all amendment(s) to solicitations by signing and returning the solicitation amendment(s). Amendment acknowledgement(s) may be submitted with the bid or may be forwarded separately. If forwarded separately, amendment acknowledgement(s) must contain the solicitation number and response due date and time on the front of the envelope. The procuring agency must receive the amendment acknowledgement(s) by the response due date and time specified for receipt of bids for the bid to be deemed responsive. Failure to acknowledge solicitation amendments may be grounds for rejection.
- A.3.2.** No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the solicitation. All amendments to the solicitation shall be made in writing by the procuring agency.
- A.3.3.** It is the Bidder's responsibility to check frequently for any possible amendments that may be issued. The procuring agency is not responsible for a bidder's failure to acquire any amendment documents required to complete a solicitation.

### **A.4. Bid Change**

If the bidder needs to change a bid prior to the solicitation response due date, a new bid shall be submitted to the procuring agency with the following statement "This bid supersedes the bid previously submitted" in a single envelope, package, or container and shall be sealed. The name and address of the bidder shall be inserted in the upper left corner of the single envelope, package, or container. SOLICITATION NUMBER AND SOLICITATION RESPONSE DUE DATE AND TIME MUST APPEAR ON THE FACE OF THE SINGLE ENVELOPE, PACKAGE, OR CONTAINER.

### **A.5. Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

By submitting a response to this solicitation:

- A.5.1.** The prospective primary participant and any subcontractor certifies to the best of their knowledge and belief, that they and their principals or participants:
  - A.5.1.1.** Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;

- A.5.1.2.** Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- A.5.1.3.** Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph A.5.1.2. of this certification; and
- A.5.1.4.** Have not within a three-year period preceding this application/proposal had one or more public (Federal, State or local) contracts terminated for cause or default.

**A.5.2.** Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its solicitation response.

## **A.6. Bid Opening**

Sealed bids shall be opened by the enter: Procuring Agency Name located at enter: Bid Opening Location at the time and date specified in the solicitation as the Response Due Date and Time.

## **A.7. Bids Subject to Public Disclosure**

Unless otherwise specified in the Oklahoma Open Records Act, Central Purchasing Act, or other applicable law, documents and information a bidder submits as part of or in connection with a bid are public records and subject to disclosure. Bidders claiming any portion of their bid as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. The Chief Administrative Officer of the requesting agency shall make the final decision as to whether the documentation or information is confidential.

## **A.8. Late Bids**

Bids received by the procuring agency after the response due date and time shall be deemed non-responsive and shall NOT be considered for any resultant award.

## **A.9. Legal Contract**

- A.9.1.** Submitted bids are rendered as a legal offer and any bid, when accepted by the procuring agency, shall constitute a contract.
- A.9.2.** The Contract resulting from this solicitation will consist of the following documents in order of preference: Contract award documents, including but not limited to the Purchase Order, Contract Modifications, required certification statement, affidavit, and change orders; the solicitation including any amendments; and the successful bid to the extent that the bid does not conflict with the requirements of the Contract award documents or solicitation or applicable law. In the event there is a conflict between any of the preceding documents, the Contract award documents prevail over the solicitation, and both the Contract award documents and the solicitation shall prevail over the successful bid.
- A.9.3.** Any contract(s) awarded pursuant to the solicitation shall be legibly written or typed.

## **A.10. Pricing**

- A.10.1.** Bids shall remain firm for a minimum of sixty (60) days from the solicitation closing date.
- A.10.2.** Bidders guarantee unit prices to be correct.
- A.10.3.** In accordance with 74 O.S. §85.40, ALL travel expenses to be incurred by the supplier in performance of the Contract shall be included in the total bid price/contract amount.

## **A.11. Manufacturers' Name and Approved Equivalents**

Unless otherwise specified in the solicitation, manufacturers' names, brand names, information and/or catalog numbers listed in a specification are for information and not intended to limit competition. Bidder may offer any brand for which they are an authorized representative, which meets or exceeds the specification for any item(s). However, if bids are based on equivalent products, indicate on the bid form the manufacturer's name and number. Bidder shall submit sketches, descriptive literature, and/or complete specifications with their bid. Reference to literature submitted with a previous bid will not satisfy this provision. The bidder shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids that do not comply with these requirements are subject to rejection.

## **A.12. Clarification of Solicitation**

Clarification pertaining to the contents of this solicitation shall be directed in writing to the Contracting Officer specified in the solicitation.

## **A.13. Rejection of Bid**

The State reserves the right to reject any bids that do not comply with the requirements and specifications of the solicitation. A bid

may be rejected when the bidder imposes terms or conditions that would modify requirements of the solicitation or limit the bidder's liability to the State. Other possible reasons for rejection of bids are listed in OAC 580:15-4-11.

#### **A.14. Award of Contract**

- A.14.1.** The procuring agency may award the Contract to more than one bidder by awarding the Contract(s) by item or groups of items, or may award the Contract on an ALL OR NONE basis, whichever is deemed by the procuring agency to be in the best interest of the State of Oklahoma.
- A.14.2.** Contract awards will be made to the lowest and best bidder(s) unless the solicitation specifies that best value criteria is being used.
- A.14.3.** In order to receive payments from the State of Oklahoma, suppliers who are not registered on the State of Oklahoma Vendor Registration list must complete the "Vendor/Payee Form" ([www.ok.gov/OSF/documents/osfvend.pdf](http://www.ok.gov/OSF/documents/osfvend.pdf)). Non-U.S. suppliers who are not registered on the State of Oklahoma Vendor Registration List must complete a W-8BEN ([www.irs.gov/pub/irs-pdf/fw8ben.pdf](http://www.irs.gov/pub/irs-pdf/fw8ben.pdf)). Failure to do so may delay contract award.

#### **A.15. Contract Modification**

- A.15.1.** The Contract is issued under the authority of the procuring agency who signs the Contract. The Contract may be modified only through a written Contract Modification, signed by the procuring agency approving official.
- A.15.2.** Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procuring agency in writing, or made unilaterally by the Supplier, is a breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including unauthorized written Contract Modifications, shall be void and without effect, and the Supplier shall not be entitled to any claim under this Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the resultant Contract.

#### **A.16. Delivery, Inspection and Acceptance**

- A.16.1.** Unless otherwise specified in the solicitation or awarding documents, all deliveries shall be F.O.B. Destination. The bidder(s) awarded the Contract shall prepay all packaging, handling, shipping and delivery charges and firm prices quoted in the bid shall include all such charges. All products and/or services to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the State at destination. "Destination" shall mean delivered to the receiving dock or other point specified in the purchase order. The State assumes no responsibility for goods until accepted by the State at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the supplier until accepted by the receiving agency. The supplier(s) awarded the Contract shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.
- A.16.2.** Supplier(s) awarded the Contract shall be required to deliver products and services as bid on or before the required date. Deviations, substitutions or changes in products and services shall not be made unless expressly authorized in writing by the procuring agency.

#### **A.17. Invoicing and Payment**

- A.17.1.** Pursuant to 74 O.S. §85.44(B), invoices will be paid in arrears after products have been delivered or services provided.
- A.17.2.** Interest on late payments made by the State of Oklahoma is governed by 62 O.S. §34.71 and 62 O.S. §34.72.

#### **A.18. Tax Exemption**

State agency acquisitions are exempt from sales taxes and federal excise taxes. Bidders shall not include these taxes in price quotes.

#### **A.19. Audit and Records Clause**

- A.19.1.** As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any Contract with the State, the successful bidder(s) agree any pertinent State or Federal agency will have the right to examine and audit all records relevant to execution and performance of the resultant Contract.
- A.19.2.** The successful bidder(s) awarded the Contract(s) is required to retain records relative to the Contract for the duration of the Contract and for a period of three years following completion and/or termination of the Contract. If an audit, litigation, or other action involving such records is started before the end of the three year period, the records are required to be maintained for three years from the date that all issues arising out of the action are resolved, or until the end of the three year retention period, whichever is later.

## **A.20. Non-Appropriation Clause**

The terms of any Contract resulting from the solicitation and any Purchase Order issued for multiple years under the Contract are contingent upon sufficient appropriations being made by the Legislature or other appropriate government entity. Notwithstanding any language to the contrary in the solicitation, purchase order, or any other Contract document, the procuring agency may terminate its obligations under the Contract if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements. The Requesting (procuring) Agency's decisions as to whether sufficient appropriations are available shall be accepted by the supplier and shall be final and binding.

## **A.21. Choice of Law**

Any claims, disputes, or litigation relating to the solicitation, or the execution, interpretation, performance, or enforcement of the Contract shall be governed by the laws of the State of Oklahoma.

## **A.22. Choice of Venue**

Venue for any action, claim, dispute or litigation relating in any way to the Contract shall be in Oklahoma County, Oklahoma.

## **A.23. Termination for Cause**

- A.23.1.** The supplier may terminate the Contract for default or other just cause with a 30-day written request and upon written approval from the procuring agency. The State may terminate the Contract for default or any other just cause upon a 30-day written notification to the supplier.
- A.23.2.** The State may terminate the Contract immediately, without a 30-day written notice to the supplier, when violations are found to be an impediment to the function of an agency and detrimental to its cause, when conditions preclude the 30-day notice, or when the procuring agency determines that an administrative error occurred prior to Contract performance.
- A.23.3.** If the Contract is terminated, the State shall be liable only for payment for products and/or services delivered and accepted.

## **A.24. Termination for Convenience**

- A.24.1.** The State may terminate the Contract, in whole or in part, for convenience if the procuring agency determines that termination is in the State's best interest. The procuring agency shall terminate the Contract by delivering to the supplier a Notice of Termination for Convenience specifying the terms and effective date of Contract termination. The Contract termination date shall be a minimum of 60 days from the date the Notice of Termination for Convenience is issued by the procuring agency.
- A.24.2.** If the Contract is terminated, the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the supplier.

## **A.25. Insurance**

The successful bidder(s) awarded the Contract shall obtain and retain insurance, including worker's compensation, automobile insurance, medical malpractice, and general liability, as applicable, or as required by State or Federal law, prior to commencement of any work in connection with the Contract. The supplier awarded the Contract shall timely renew the policies to be carried pursuant to this section throughout the term of the Contract and shall provide the procuring agency with evidence of such insurance and renewals.

## **A.26. Employment Relationship**

The Contract does not create an employment relationship. Individuals performing services required by this Contract are not employees of the State of Oklahoma or the procuring agency. The supplier's employees shall not be considered employees of the State of Oklahoma nor of the procuring agency for any purpose, and accordingly shall not be eligible for rights or benefits accruing to state employees.

## **A.27. Compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007**

By submitting a bid for services, the bidder certifies that they, and any proposed subcontractors, are in compliance with 25 O.S. §1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employment Verification Program (E-Verify) available at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify).

## **A.28. Compliance with Applicable Laws**

The products and services supplied under the Contract shall comply with all applicable federal, state and local laws, and the supplier shall maintain all applicable licenses and permit requirements.

## **A.29. Special Provisions**

Special Provisions set forth in SECTION B apply with the same force and effect as these General Provisions. However, conflicts or inconsistencies shall be resolved in favor of the Special Provisions.

May 17, 2010

RE: Disability Fund Actuarial Consulting Services and the Determination of Disability Reserves

Dear Prospective Consultant:

The Oklahoma State and Education Employees Group OSEEGIB (hereinafter, OSEEGIB) is seeking to contract with a qualified consultant (hereinafter, Consultant) to provide Disability Fund actuarial consulting services. Pursuant to 74 O.S. Supp. 2009 § 1320(C), OSEEGIB is issuing this letter as an request to competitively bid for the performance of the required services. At the sole discretion of OSEEGIB, the contract shall be awarded for a one (1) year term effective January 1, 2011, with the possibility of two (2) additional one-year renewals, expiring December 31, 2013.

The Disability Fund is one of three separate enterprise funds maintained by OSEEGIB. The fund is self-insured and provides partial income replacement for an employee who incurs a medically disabling condition, which will keep him/her off work for at least one month. The medically disabling condition may or may not be work related.

Disability benefits are available to all active state employees and to employees of counties that choose to participate in the program. Beginning on the 31<sup>st</sup> day of disability, a claimant's benefit is equal to sixty percent (60%) of the base compensation at the time of the medically disabling incident, less any offsets, subject to the following limitations:

1. Short-term disability is limited to the maximum monthly benefit of Two Thousand Five Hundred Dollars (\$2,500.00) on a base compensation ceiling of Four Thousand One Hundred Sixty-Seven Dollars (\$4,167.00). Short-term disability benefits end after the first one hundred eight (180) days of disability.
2. Long-term disability is limited to the maximum monthly benefit of Three Thousand Dollars (\$3,000.00) on a base compensation ceiling of Five Thousand Dollars (\$5,000.00). If the disability occurred prior to July 1, 1998, the maximum monthly benefit is Two Thousand Dollars (\$2,000.00) per month on base compensation of Three Thousand Three Hundred Thirty-Three Dollars (\$3,333.00). There is a minimum benefit payable of Fifty Dollars (\$50) after appropriate offsets.

Offsets are amounts received by the claimant from other sources for the disability, which reduce any disability benefits due from the State. These sources include sick and annual leave, Social Security benefits, Retirement benefits, other disability plans, Workers' Compensation benefits, subrogation, and fifty percent (50%) of any wages received while the claimant is partially disabled.

The maximum benefit period depends upon the type of disability, years of service and age at the time the disability occurs. The maximum benefit period for nervous and mental disorders is two (2) years. Claimants with less than five (5) years of service also receive benefits for a maximum of two (2) years. Claimants with more than five (5) years of service may receive benefits to age sixty-five (65). Claimants under age sixty (60) may receive benefits to age sixty-five (65). Reduced benefits apply if the disability begins at age sixty (60) or after.

OSEEGIB's Rules governing the disability plan and the disability member handbook may be viewed on OSEEGIB's website at [www.sib.ok.gov](http://www.sib.ok.gov). Click on "Site Map" and then "Handbooks" to view the member handbook and "Site Map" and then "About OSEEGIB" to view the Rules.

The number of primary members enrolled in the Disability plan as of April 30, 2010 is 39,351, with 73 of those members on short-term disability and 665 on long-term disability.

KPMG, the auditor for OSEEGIB opined in a memo dated April 16, 2009 that OSEEGIB is not an Other Post-Employment Benefit (OPEB) trust set up for retirees, and is therefore not subject to the reporting requirements of Governmental Accounting Standards Board (GASB) Statement 43, *Financial Reporting for Postemployment Benefit Plans Other than Pension Plans*. Rather, OSEEGIB should prepare its financial statements in accordance with paragraph 138 of GASB 34, *Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*, which addresses reporting by special-purpose governments engaged only in business-type activities.

## **I. BIDDING REQUIREMENTS:**

Any questions regarding this Request for Proposal, "RFP", must be directed to Joe McCoy, Director, Internal Audit, via email [jmccoy@sib.ok.gov](mailto:jmccoy@sib.ok.gov) by June 1, 2010. **All bids must be received by 2:00 p.m. July 13, 2010, addressed to:**

Charles Clifford, Purchasing Director  
Oklahoma State and Education Employees Group OSEEGIB  
3545 N. W. 58<sup>th</sup>, Suite 600  
Oklahoma City, Oklahoma 73112

OSEEGIB reserves the right to alter these dates and/or withdraw this RFP should it be determined to be in its best interest to do so.

All services to be provided pursuant to this RFP are strictly on a fee for services awarded through this contract. Absolutely no commissions or finder's fees are to be paid to any subcontractor, broker, agent or other individual, organization or entity.

OSEEGIB will not be responsible for any costs a proposing Consultant may incur in preparing and submitting a bid, in making an oral presentation, in providing a demonstration, or in performing any other related activities.

OSEEGIB may at any time hereafter supplement the RFP, the bid and the resulting contract for purposes of enumerating, defining, and clarifying services, duties and functions, but not to add new services, duties, or functions.

During the evaluation period, Consultants may be requested to present supplemental information clarifying its bid. This supplemental information must be submitted in writing and will be included as a formal part of the Consultant's bid.

OSEEGIB intends to make a recommendation to the Oklahoma Department of Central Purchasing by August 24, 2010. Notification will be made to the successful Consultant by issuance of a purchase order distributed by the Oklahoma Department of Central Purchasing. Public information releases pertaining to this project shall not be made without prior written approval by OSEEGIB.

Notwithstanding anything to the contrary herein, any and all decisions as to suitability, competency, ability to perform, conflicts of interest or the appearance thereof, responsiveness of the Consultant's proposal, acceptability of such proposal, or other decisions of qualifications with performance, shall be at the unrestricted sole discretion of OSEEGIB. The contract will be awarded based on Consultant's staff credentials, depth of experience with similar clients, overall consulting knowledge, and fees.

**To qualify as a candidate for the award of this contract, the Consultant must be able to satisfy all minimum requirements and shall state in its response to this RFP how it meets each requirement and will continue to do so throughout the life of the contract.**

## **II. MINIMUM REQUIREMENTS:**

The Consultant shall comply with all requirements in this section and provide appropriate documentation in its response to each Minimum Requirement. The Consultant's compliance with the requirements shall be determined according to the sole unrestricted discretion of OSEEGIB. The Consultant must state in its response exactly how it will comply and provide detailed information and state affirmatively its understanding of the requirement and its agreement to comply with that requirement for the duration of the contract. Bids failing to meet Minimum Requirements shall not be considered.

The Consultant shall:

1. Designate an individual who is acceptable to OSEEGIB to work with OSEEGIB regarding all aspects of this contract and identify the office location(s) from which all work will be performed.
2. Agree to make any of its facilities available to OSEEGIB if it is determined that an on-site visit will be beneficial and utilized as part of the final evaluation process.
3. Respond with specific instances showing experience and expertise as a company and as individuals conducting business in accordance with the requests of this RFP.
4. Provide the names of non-affiliated clients, contact names, addresses, email addresses, telephone numbers, types of services provided and the number of primary participants for three (3) clients of similar size requiring similar services.
5. Disclose any apparent or potential conflict of interest or affirm that it has none. The Consultant shall have no interest, direct or indirect, which OSEEGIB deems to conflict in any manner or degree with the performance of services required under this contract. The Consultant shall not engage in any conduct that violates or induces others to violate provisions in the Oklahoma Statutes regarding the conduct of public employees. This includes, but is not limited to, The Anti-Kickback Act of 1974 at 74 O. S. (2001) § 3401, et seq., and the Conflict of Interest provision in the Oklahoma Central Purchasing Act at 74 O. S. (2001) §85.3.
6. Disclose any prior lawsuits and litigation involving alleged or actual violations of administrative rules and hearings, or any lawsuits and litigation threatened or impending, involving itself and the State of Oklahoma or any political subdivisions, and/or any state officer and/or any state employee acting in the capacity of a state employee, and any settlements, compromises (if confidential, a statement of that fact) or Judgments of Record resulting from the foregoing described litigation or administrative proceedings for the past five (5) years or affirm there are none.
7. List and disclose contract cancellations or negligent causes of action that arose from work performed that is the same or similar to work identified in the Scope of Services in this RFP that was initiated by persons or entities other than the Consultant and resulted in a settlement with or judgment against the Consultant in any jurisdiction in the United States in an amount of Ten Thousand Dollars (\$10,000.00) or more within the previous five (5) years, or affirm there are none.

8. Agree that all member information concerning this RFP and OSEEGIB is the sole property of the State of Oklahoma and shall remain confidential. It shall not be used by the Consultant nor transmitted to others for any reasons whatsoever, except as shall be required to administer and implement the program, and then only with prior written approval from OSEEGIB. A list of individuals with OSEEGIB who are capable of granting this approval shall be supplied to the successful Consultant. OSEEGIB shall maintain confidentiality to the extent permitted by law.
9. Execute a HIPAA Business Associate Agreement with OSEEGIB according to the terms as defined in the HIPAA Business Associate Agreement attached as Exhibit A to this RFP.
10. Agree that certain conditions may preclude the Consultant from meeting each and every detail specified in this RFP. It is also foreseeable that the Consultant will have a better method of accomplishing the required services of the RFP. The Consultant should outline in its response how the Consultant would accomplish OSEEGIB's requirements as stated and then outline alternative ways of doing business that the Consultant is offering. Any alternative method or exceptions to terms, conditions or other requirements in any part of the RFP must be clearly pointed out in both the appropriate section of the proposal and listed in the Statement of Compliance attached to and made a part of this RFP. Otherwise, OSEEGIB shall consider that all items offered are in strict compliance with the RFP and the Consultant shall be responsible for compliance. OSEEGIB shall specify at the time of the awarding of the contract what, if any, optional, alternative methods are accepted.
11. Agree that there will be no adjustments permitted to quoted fees after the bid submission deadline. The Consultant must bid and guarantee the bid for the initial term of this contract and each of the two (2) one-year (1-year) possible renewal years. The quoted fee shall be bid as a maximum annual fee, to be billed at hourly rates. **All expenses shall be included in the hourly rates. Hourly rates with ranges are not acceptable.** For special projects, the quoted rates shall be bid as hourly rates for each level of expertise of personnel providing services. Prior to the commencement of a special project, the Consultant must submit a proposal letter with a maximum fee for the special project, billable at hourly rates. The special project must be approved by OSEEGIB prior to the commencement of the work.

In order to evaluate how the professional fee was determined, please provide the following for each category of personnel with a different billing rate:

  - a. Staff position (i.e., Partner, Principal, Manager),
  - b. Estimated hours,
  - c. Rate per hour (ranges are not acceptable),
  - d. Total cost for each staff position, and
  - e. Total personnel cost.

12. Acknowledge the terms of OSEEGIB's Fraud Waste and Abuse Compliance Program. OSEEGIB's Compliance Program can be viewed at [www.sib.ok.gov](http://www.sib.ok.gov). Go to the left column and click on Site Map, then click on Fraud Waste and Abuse Program, then Compliance Program.
13. Agree that it does not currently, nor during the term of this Contract will it, contract with, or employ individuals or entities that are excluded by the Department of Health and Human Services, Office of the Inspector General or included on the Excluded Parties List System maintained by the General Services Administration.
14. Agree that the Consultant any and all of its subcontracted vendors that have access to OSEEGIB Confidential data shall maintain the confidentiality of the same in accordance with the procedures set forth herein or as otherwise mandated by Oklahoma law.

**III. SCOPE OF SERVICES:**

- A. The Consultant shall provide an annual Actuarial Valuation Report with the determination of the disability reserves and the calculation of Risk-Based Capital in accordance with the Nation Association of Insurance Commissioners guidelines within ninety (90) days of the end of the calendar year. The scope of these services shall include:
  1. Review annual claims data and evaluate actuarial assumptions; assess short-term and long-term disability risk exposure;
  2. Determine the annual liability for unpaid claims and claims incurred but not reported. Calculate for the reporting period reserve requirements using actuarial assumptions and plan experience for the disability plan considering benefit revisions;
  3. Develop durational load experience factors, if necessary; and,
  4. Provide documentation of reserve calculations, the Risk-Based Capital calculation, and the actuarial assumptions. Develop and use an approved form of written report to communicate to OSEEGIB the results of the financial analysis that documents the approach, findings, and recommendations.

- B. The Consultant must annually provide OSEEGIB a Rate Adequacy Study. A preliminary Rate Adequacy Study shall be provided at least ten days prior to OSEEGIB's July Board meeting. A final Rate Adequacy Study shall be provided at least ten (10) days prior to OSEEGIB's August Board meeting. The Consultant shall coordinate the rate setting process with the prior calendar year disability reserve determination, plan design, experience of members, suggested enhancements to the plan design and the plan documents. The scope of these services shall include:
1. Preparing the Rate Adequacy Study while taking the following into consideration during the calculation of the rates:
    - a. plan design changes;
    - b. new and proposed legislation;
    - c. any amortization and subsidization policies; and,
    - d. input from members of OSEEGIB, OSEEGIB's administrative staff, the Legislature, and the Governor.
  2. Discussing with OSEEGIB's administrative staff to determine the assumptions to be used, and,
  3. Providing OSEEGIB's administrative staff the Rate Adequacy Study and discussing the findings.
- C. Upon request, the Consultant shall provide a report of the fiscal impact of:
1. Proposed Administrative Rules revisions;
  2. Recommend plan Design enhancements and the cost to benefit comparison of each enhancement;
  3. Enacted or proposed State or Federally mandated benefits;
  4. Entities joining or leaving the OSEEGIB and other major demographic changes;
  5. Plan design alternatives as requested by OSEEGIB's administrative staff, Employees Benefits Council (EBC), Governor's staff, Legislative staff, Oklahoma Public Employees Retirement System (OPERS), Teachers Retirement System (TRS), and other interested parties; and,
  6. Proposed legislation.
- D. The Consultant must, upon request, provide and discuss with OSEEGIB detailed actuarial spreadsheets, calculations, assumptions utilized and other detailed material sufficient to support the Valuation Report and the Rate Adequacy Study and the other reporting requirements of this RFP.

- E. The Consultant must be available to respond to general OSEEGIB's administrative staff requests. General requests are limited in scope and duration and do not constitute a special project.
- F. The Consultant must be available to meet with OSEEGIB's administrative staff, OSEEGIB's Advisory Council, EBC, Governor's staff, Legislative staff, OPERS, TRS, and other interested parties, as needed.
- G. The Consultant must be available to perform special projects relating only to the Disability Fund that are presently unanticipated, but may be requested by OSEEGIB and/or the Legislature. Special projects must be approved in writing by OSEEGIB's administrative staff prior to the commencement of the work.

**IV. GENERAL CONTRACTUAL PROVISIONS:**

**A. Acceptance of Offer**

The submission of a proposal shall constitute a binding offer to perform those services described within the proposal. By submitting a proposal, the Consultant agrees not to make any claims for, or have any right to, damages because of any misunderstanding or misrepresentation of the specifications or because of any misinformation or lack of information.

If a Consultant fails to notify OSEEGIB of an error, ambiguity, conflict, discrepancy, omission or other error in the RFP known to the Consultant, or an error that reasonably should have been known by the Consultant, the Consultant shall submit a bid at its own risk; and, if awarded the contract, the Consultant shall not be entitled to additional compensation, relief or time by reason of the error or its later correction.

**B. Contractual Term**

The contract being proposed is for a one (1)-year term, with two (2) one (1)-year renewals at the option of OSEEGIB. OSEEGIB will consider renewing the contract for the additional two (2) years subject to the terms and conditions of the contract, unless OSEEGIB, at its sole discretion, determines that re-bidding the services is in the members' best interest.

**C. Termination**

The Consultant shall give OSEEGIB at least thirty (30) days written notice prior to cancellation. The Consultant shall also provide thirty (30) days written notice prior to non-renewal. Said notice shall state the grounds for such cancellation or non-renewal.

OSEEGIB and the Consultant agree that each party reserves the right to terminate this contract if funds are not available to support the continuation of this benefit program, or if it is otherwise determined by OSEEGIB, at its sole discretion, that it is in the best interest to terminate the contract. OSEEGIB and the Consultant may terminate this contract for cause upon giving the Consultant ten (10) days written notice. Termination for cause is defined as the failure of the Consultant to maintain the quality of its services provided for by this contract to the satisfaction of OSEEGIB. OSEEGIB may terminate this contract without cause upon thirty (30) days written notice.

Following the effective date of termination, this contract shall be of no further force and effect, except that each party shall remain liable for any obligations or liabilities arising from activities carried on by it hereunder prior to the effective date of termination or cancellation of this contract.

#### **D. Appropriated Funds**

The parties understand and agree that none of the sums to be paid under this agreement are appropriated funds. Should there be a revenue shortfall, OSEEGIB will not seek appropriations and will not use appropriated funds to pay for this obligation. The most recent financial statement of OSEEGIB is posted on OSEEGIB's website:

[www.sib.ok.gov/PDFfiles/CAFR.pdf](http://www.sib.ok.gov/PDFfiles/CAFR.pdf)

#### **E. Records**

The Consultant shall maintain full and adequate records relating to the services it is performing under this agreement and shall allow OSEEGIB to review and copy such records upon request. The Consultant shall provide adequate safeguards for all books and records.

#### **F. Ownership of Data**

The Consultant shall recognize that all data generated during the performance of this contract by OSEEGIB, the Consultant, or its subcontractor and/or affiliates, is proprietary and confidential to OSEEGIB and shall not be used by the Consultant for purposes not recognized by this RFP. The Consultant shall recognize OSEEGIB's exclusive ownership of all data and information and shall not reveal or sell any portion of such to any third party or otherwise use for its own financial gain.

The Consultant further agrees that:

1. Confidential data is data that includes but is not restricted to Private Health Information, identifiable member, employee, and provider information that contains demographics, financial accounts, Social Security Numbers, medical information, or health plan coverage information. Media types include DVD, CD, Solid State Disks, flash memory tapes, hard disk drives, diskettes, and all other media that is either portable or considered non-portable.
2. Data files will be encrypted with PGP software regardless of transmission method. Acceptable data transmission methods:
3. If Consultant has an FTP server, the data will be transmitted utilizing encryption with a minimum of 128-bit cipher strength.

4. If Consultant utilizes the OSEEGIB FTP server, the authorized user must complete a Security Access application that will be provided upon request which will include the credentials and other information necessary to access the data files.
5. If FTP cannot be utilized, OSEEGIB shall make the data available by an SSL/VPN portal for download via a browser.
6. It will not share User accounts and passwords. The use is only for the named individual listed on the security application form.
7. To notify the OSEEGIB Help Desk when an authorized user is no longer employed by Consultant.
8. That data shall be maintained in a secured and controlled environment with limited access to authorized personnel only.
9. That data shall be stored on media that is either utilizing full or whole disk encryption or on media that is in a secure, controlled, and monitored facility such as a data center.
10. That data on media that is physically transported outside a secure facility shall be encrypted. This applies to backup media as well as all other media types.
11. That media containing OSEEGIB data that is to be retired from use shall be destroyed following the NIST Special Publication 800-88 methods. Media cannot be repaired or replaced under warranty. Most vendors offer a media retention warranty that provides for replacement media while allowing the defective media to be retained for destruction.
12. To comply with OSEEGIB's FTP Policies, Procedures, and Connection Information as depicted in Exhibit B.
13. That the Consultant and its subcontractors will comply with the terms of encryption, access to the database and security of the eligibility file as stated in this Contract. Consultant and its subcontractors agree that written notice of a breach of confidential information will be delivered to OSEEGIB within 48 hours, with a statement that the confidential information was encrypted. Consultant agrees to jointly investigate any breach of confidential information and determine the party that caused the breach. If the breach is caused by Consultant or a subcontractor, Consultant agrees to pay all costs and losses incurred by OSEEGIB arising from the breach, if any.

**G. Contract Defined**

The Purchase Order, this letter requesting proposals, together with the bid and exhibits, contains the entire agreement between OSEEGIB and the Consultant relating to the rights granted and the obligations assumed by the parties concerning the administration and/or management of claims and constitute the Contract.

Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this RFP and the response thereto, not expressly set forth, are of no force or effect.

**H. Hold Harmless**

The Consultant alone shall be responsible for the work, direction, and compensation of all its employees, Consultants, agents and subcontractors. Nothing in the contracts, or the performance thereof by the Consultant, shall impose any liability or duty whatsoever on the State including, but not limited to, any liability for taxes, compensation, disability benefits, social security or other employee benefits for any person or entity.

The contract shall hold harmless and indemnify OSEEGIB, its officers, employees and employee representatives from and against any injury, damage, loss or liability to persons or property resulting from or arising out of this contract and the act, omissions, liabilities or obligations of the Consultant as an expert Consultant, independent contractor, subcontractor, employee or agent.

**I. Severability**

The terms and provisions of this contract shall be deemed to be severable one from the other, and any determination at law or in a court of equity that one term or provision is unenforceable, shall have no effect on the remaining terms and provisions of this contract, or any one of them, in accordance with the intent and purposes of the parties hereto.

**J. Notice**

Any notice required to be given, pursuant to the terms and provisions of the contract, shall be in writing, and delivered either by hand delivery with written receipt, or delivered by the U. S. Postal Service, (USPS) postage prepaid, by certified mail, return receipt requested, to OSEEGIB at 3545 N.W. 58<sup>th</sup>, Oklahoma City, Oklahoma 73112, or the Consultant at the address listed on the DCS purchase order. The USPS notice shall be effective on the date indicated on the return receipt.

**K. Supremacy of State Statutes**

This contract is subject to all applicable Oklahoma State Statutes, OSEEGIB's Rules and Administrative Directives. Any provision of this contract that is not in conformity with existing or future legislation shall be considered amended to comply with such legislation. Any interpretation or disputes with respect to contract provisions shall be resolved according to the laws of the State of Oklahoma. Jurisdiction and venue for any litigation between OSEEGIB and the Consultant shall occur in either a State or Federal court in Oklahoma County, Oklahoma.

**L. Force Majeure**

Neither party shall be liable for any delay or failure of performance under this contract due to an act of God, or due to war mobilization, insurrection, rebellion, civil commotion, riot, act of extremist or public enemy, sabotage, explosion, fire, flood or storm.

**M. Assignments**

This contract may not be assigned in whole or in part.

**N. Data Transmission Security**

The consultant shall ensure compliance with 42 USC § 1320d-2(d)(1),(2) and HIPAA Privacy and Security Regulations.

Bid prices will be evaluated and only those bids that are competitively priced providing the best value to the State of Oklahoma and complying with Minimum Requirements will be evaluated for quality. Bids reaching this point will be evaluated and awarded points as follows:

	<u>Maximum Points</u>
• Experience, credentials and expertise	35
• References	30
• Fee for services	<u>35</u>
TOTAL POINTS	100

OSEEGIB reserves the right to consider historical information and facts, whether gained from the Consultant's proposal, question and answer conferences, references, or any other source in the evaluation process. Thank you for your interest in the RFP.

Sincerely,

Joe McCoy  
Director, Internal Audit

JMcC:sl

Attachments: Bid Sheet  
Non-Collusion Affidavit  
Statement of Compliance  
Exhibit A: HIPAA Business Associate Agreement  
Exhibit B: OSEEGIB FTP Policies and Procedures and Connection Information



**STATEMENT OF COMPLIANCE**

Each Consultant shall be required to submit to this Request for Proposal as it is written. Any Consultant who wishes to propose exceptions or alternatives to any term, condition, or requirement of this RFP must specify the exception and/or alternative and submit a bid for each deviation. If a Statement of Compliance is not returned OSEEGIB with the Consultant's original proposal, the bid may be excluded from further consideration. If a Statement of Compliance is submitted with deviations, OSEEGIB will consider such exceptions and/or alternatives in the evaluation process or such exception and/or alternative may constitute grounds for rejection of the proposal.

The proposal submitted to OSEEGIB is in strict compliance with this RFP, and if selected as a Consultant, the Consultant will be responsible for meeting all requirements of this RFP.

The proposal submitted to OSEEGIB contains deviations from the specifications of this RFP. The deviations are attached.

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement (“Agreement”) is by and between the State of Oklahoma ex rel. Oklahoma State and Education Employees Group OSEEGIB (“OSEEGIB”), 3545 N. W. 58<sup>th</sup>, Ste 1000, Oklahoma City, Oklahoma 73112 and Consultant (“Consultant”), \_\_\_\_\_ (ADDRESS).

- A. OSEEGIB discloses claims information to Consultant. Claims data contains Protected Health Information (“PHI”) (defined below).
- B. OSEEGIB and Consultant intend to protect the privacy and provide for the security of PHI disclosed to Consultant in compliance with the Health Insurance Portability and Accountability Act of 1996, (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”) and regulations promulgated there under by the U. S. Department of Health and Human Services (HIPAA Regulations) and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy and Security Rules (defined below) requires OSEEGIB to enter into a contract containing specific requirements with Consultant prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.502(e) and 164.504(e) of the Code of Federal Regulations (“CFR”) and contained in this Agreement.
- D. OSEEGIB and Consultant acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment to this agreement may be required to ensure compliance with changing laws.

In consideration of the mutual promises and the exchange of information pursuant to this Agreement, the parties agree as follows:

1) Definitions.

- a) “Consultant” shall have the meaning and definition of a Business Associate under the Privacy and Security Rules, including, but not limited to, 45 CFR §160.103.
- b) “OSEEGIB” shall have the meaning as a ‘Covered Entity’ in the Privacy and Security Rules including, but not limited to, 45 CFR §160.103.
- c) “Data Aggregation” shall have the meaning as defined in the Privacy and Security Rules, including, but not limited to, 45 CFR §164.501.
- d) “Designated Record Set” shall have the meaning as defined in the Privacy and Security Rules, including, but not limited to, 45 CFR §164.501.
- e) “Health Care Operations” shall have the meaning as defined in the Privacy and Security Rules including, but not limited to, 45 CFR §164.501.

- f) “HITECH” means the Health Information Technology for Economic and Clinical Health Act of 2009
  - g) “Privacy and Security Rules” shall mean the HIPAA Regulations that are codified at 45 CFR Parts 160 and 164.
  - h) “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 CFR §164.501. [45 CFR §§160.103 and 164.501].
  - i) “Protected Information” shall mean PHI provided by OSEEGIB to Consultant or created or received by Consultant on OSEEGIB’s behalf.
- 2) Obligations of Consultant.
- a) Permitted Uses. Consultant shall not use Protected Information except for the purpose of performing Consultant’s obligations under the Contract for actuarial services and consulting services pursuant to special projects requested by OSEEGIB. Further, Consultant shall not use Protected Information in any manner that would constitute a violation of the Privacy or Security Rule if so used by OSEEGIB, except that Consultant may use Protected Information (i) for the proper management and administration of Consultant, (ii) to carry out the legal responsibilities of Consultant, or (iii) for Data Aggregation purposes for the Health Care Operations of OSEEGIB. [45 CFR §§164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)]
  - b) Permitted Disclosures. Consultant shall not disclose Protected Information in any manner that would constitute a violation of the Privacy and Security Rules if disclosed by OSEEGIB, except that Consultant may disclose Protected Information (i) in a manner permitted pursuant to the Contract or this Agreement (ii) for the proper management and administration of the Consultant, (iii) as required by law, or (iv) for Data Aggregation purposes for the Health Care Operations of OSEEGIB. To the extent that Consultant discloses Protected Information to a third party, Consultant must obtain, prior to making any such disclosure, (i) reasonable assurance from such third party that such Protected Information will be held confidential as provided in the Agreement, and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (iii) an agreement from such third party to notify Consultant within a reasonable time of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. [45 CFR §§164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

- c) Appropriate Safeguards. Consultant shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by this Agreement. [45 CFR §164.504(e)(2)(ii)(B)]. Consultant agrees to transmit all records containing OSEEGIB protected information to OSEEGIB or any party described in Section 2 (b) according to procedures that ensure confidentiality and security of OSEEGIB protected information.
- d) Reporting of Improper Use or Disclosure. Consultant shall report to OSEEGIB in writing of any use or disclosure of Protected Information otherwise than as provided for by this Agreement within five (5) days of becoming aware of such use or disclosure. 45 CFR §164.504(e)(2)(ii)(C)].
- e) Consultant's Agents. Consultant shall ensure that any agents, including subcontractors to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Consultant with respect to such PHI. [45 CFR §164.504(e)(2)(d)].
- f) Access to Protected Information. Consultant shall make Protected Information maintained by Consultant or its agents or subcontractors in Designated Record Sets or other agreed upon records, available to OSEEGIB for inspection and copying within ten (10) days of a request by OSEEGIB to enable OSEEGIB to fulfill its obligations under the Privacy and Security Rules, including, but not limited to, 45 CFR §164.524. [45 CFR §164.504(e)(2)(ii)(E)].
- g) Amendment of PHI. Within ten (10) days of receipt of a request from OSEEGIB for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Consultant or its agents or subcontractors shall make such Protected Information available to OSEEGIB for amendment and incorporate any such amendment to enable OSEEGIB to fulfill its obligations under the Privacy and Security Rules, including, but not limited to, 45 CFR §164.526. If any individual requests an amendment of Protected Information directly from Consultant or its agents or subcontractors, Consultant must notify OSEEGIB in writing within five (5) days of the request. Any denial of amendment of Protected Information maintained by Consultant or its agents or subcontractors shall be the responsibility of OSEEGIB. [45 CFR §164.504(e)(2)(ii)(F)].

- h) Accounting Rights. Within ten (10) days of notice by OSEEGIB of a request for an accounting of disclosures of Protected Information, Consultant and its agents or subcontractors shall make available to OSEEGIB the information required to provide an accounting of disclosures to enable OSEEGIB to fulfill its obligations under the HITECH Act, or the Privacy and Security Rules, including, but not limited to, 45 CFR §164.528. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Consultant or its agents or subcontractors, Consultant shall within five (5) days of a request forward a copy to OSEEGIB. Consultant shall not disclose any Protected Information except as set forth in this Agreement. [45 CFR §§164.504(e)(2)(ii)(G) and 164.528].
- i) Governmental Access to Records. Consultant shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining OSEEGIB's compliance with the Privacy and Security Rules. [45 CFR §164.504(e)(2)(ii)(H)]. Consultant shall provide to OSEEGIB a copy of any Protected Information that Consultant provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- j) Minimum Necessary. Consultant and its agents or subcontractors shall only request, use, and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [45 CFR §164.514(d)(3)].
- k) Data Ownership. Consultant acknowledges that Consultant has no ownership rights with respect to the Protected Information.
- l) Retention of Protected Information. Notwithstanding provisions to the contrary herein, Consultant and its subcontractors or agents shall retain all Protected Information throughout the term of this Agreement and shall continue to maintain the information required under this Agreement for a period of six (6) years after termination of the Agreement between Consultant and OSEEGIB. [See 45 CFR §§164.530(j)(2) and 164.526(d)]. Consultant shall retain any Protected Information pertaining to the federal prescription drug plans administered by for OSEEGIB for ten (10) years.
- m) Notification of Breach. During the term of this Agreement, Consultant shall notify OSEEGIB within a reasonable time, of an actual breach of security, (i) an unauthorized use or disclosure of OSEEGIB PHI and or any actual or suspected use or disclosure of data or (ii) a finding or stipulation that the Consultant or any party has violated any standard or requirement of HIPAA involving OSEEGIB Protected Information or as otherwise required herein.

- n) Audits, Inspection and Enforcement. Within ten (10) days of a written request by OSEEGIB, Consultant and its agents or subcontractors shall allow OSEEGIB to conduct a reasonable inspection of the facilities, systems, books, records, RFPs, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Agreement for the purpose of determining whether Consultant has complied with HIPAA; provided, however, that (i) Consultant and OSEEGIB shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) OSEEGIB shall protect the confidentiality of all confidential and proprietary information of Consultant to which OSEEGIB has access during the course of such inspection; and (iii) OSEEGIB shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Consultant. The fact that OSEEGIB inspects, or fails to inspect, or has the right to inspect, Consultant's facilities, systems, books records, policies and procedures does not relieve Consultant of its responsibility to comply with these terms of this Agreement, nor does OSEEGIB's (i) failure to detect or (ii) detection, but failure to notify Consultant or require Consultant's remediation of any unsatisfactory practices, constitute acceptance of such practices or a waiver of OSEEGIB's enforcement rights under this Agreement.
- o) OSEEGIB and Consultant acknowledge the requirements of Subtitle D (Privacy) of the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH") that apply to covered entities and business associates. Consultant shall comply with 45 C. F. R. §§ 164.308, 164.310, 164.312, and 164.316 of the HIPAA Security Regulations as such regulations are amended from time to time, as required by HITECH § 13401.

For purposes of this Agreement, a Breach of Unsecured PHI shall be treated as discovered by Consultant as of the first day on which such breach is known to Consultant or should reasonably have been known to Consultant following the exercise of reasonable diligence. Unsecured PHI is defined as "PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified in the guidance issued under § 13402(h)(2) of HITECH on the U. S. Department of Health and Human Services Web site.

Consultant and OSEEGIB agree to jointly investigate any alleged HIPAA violations arising under this Contract, determine the party that caused the violation; and cooperate with the appropriate administrative agency, if necessary, to mitigate the effect of the violation.

### 3) Obligations of OSEEGIB.

OSEEGIB shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Consultant pursuant to this Agreement, in accordance with the standards and requirements of the Privacy and Security Rules, until such PHI is received by Consultant.

4) Amendment to this Agreement.

OSEEGIB may terminate the Agreement upon thirty (30) days written notice in the event (i) Consultant does not promptly enter into negotiations to amend this Agreement when requested by OSEEGIB or (ii) Consultant does not enter into an amendment to this Agreement providing assurance regarding the safeguarding of PHI that OSEEGIB, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the Privacy and Security Rules.

5) Indemnification.

Consultant indemnifies and holds harmless OSEEGIB from any, judgment, costs of notification to affected persons of a breach of privacy or security caused by Consultant, damage award, or CMS civil monetary penalty for a violation of HIPAA regulations arising from Consultant's or any of its subcontractor's performance of services to OSEEGIB.

6) Disclaimer.

Consultant is solely responsible for all decisions made by Consultant regarding the safeguarding of PHI.

7) Assistance in Litigation or Administrative Proceedings.

Consultant shall make itself, and any subcontractors, employees or agents assisting Consultant in the performance of its obligations under this Agreement, available to OSEEGIB, at no cost to OSEEGIB, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against OSEEGIB, its directors, officers or employees based upon a claimed violation of HIPAA, the Privacy and Security Rules or other laws relating to security and privacy, except where Consultant or its subcontractor, employee or agent is a named adverse party.

8) No Third Party Beneficiaries.

No terms either express or implied in this Agreement are intended to confer any rights, remedies, obligations or liabilities upon any person other than OSEEGIB, Consultant and their respective successors or assigns.

9) Interpretation.

The Agreement shall be interpreted as broadly as necessary to implement and comply with HITECH, HIPAA and the Privacy and Security Rules. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the Privacy and Security Rules and Oklahoma Statutes.

10) Termination.

- a) Material Breach. A breach by Consultant of any material provision of the terms of this Agreement as determined by OSEEGIB shall constitute a material breach and shall provide grounds for immediate termination of any Agreement between OSEEGIB and Consultant. [45 CFR §164.504(e)(2)(iii)].
- b) Reasonable Steps to Cure Breach. If OSEEGIB knows of a pattern of activity or practice of Consultant that constitutes a material breach or violation of the Consultant's obligations under the provisions of the terms in this Section and does not terminate this Agreement, then OSEEGIB shall take reasonable steps to cure such breach or end such violation, as applicable. If OSEEGIB's efforts to cure such breach or end such violation are unsuccessful, OSEEGIB shall either (i) terminate the total Agreement, if feasible or (ii) if termination of the total Agreement is not feasible, OSEEGIB shall report Consultant's breach or violation to the Secretary of the Department of Health and Human Services. [45 CFR §164.504(e)(1)(ii)].
- c) Effect of Termination. Upon termination of this Agreement for any reason, Consultant shall maintain records of OSEEGIB PHI use and disclosure for six years. After six years from termination, Consultant shall return or destroy all Protected Information that Consultant or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, Consultant shall continue to extend the protections described in this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR §164.504(e)(ii)(I)]. If Consultant elects to destroy the PHI, Consultant shall certify in writing to OSEEGIB that such PHI has been destroyed.

### OSEEGIB FTP Policies, Procedures, and Connection Information

#### Policy:

1. FTP accounts are assigned to and should be used by an individual, not to a department and should not be shared.
2. It is the responsibility of the external entity to notify the OSEEGIB Help Desk when an authorized user is no longer employed.
3. FTP Clients should be either SSL or SSH compatible.
4. OSEEGIB uses a SSL certificate on our ftp server that is valid for 1 year after which time the external entity will need to accept the signed certificate again for the following year.
5. External users shall not FTP any executable, program codes or databases without prior approval from OSEEGIB.
6. FTP Passwords will be created and maintained by OSEEGIB and only given to the specific user for the user account for who it was created.
7. FTP users will have access to their own home directory and subfolders. Each directory only has permissions agreed upon and assigned to them by OSEEGIB.
8. OSEEGIB reserves the right to audit log files whenever deemed necessary. Logging captures but is not limited to account information, login date and time, files transferred, and other prudent information.

#### Procedures:

1. An Application for Access to Internal OSEEGIB Systems must be completed by the individual user needing FTP access or change in access and returned to OSEEGIB.
2. After the Application for Access to Internal OSEEGIB Systems request form is received and approved by OSEEGIB administration, a user account will be created and an email notifying the requestor of its creation will be sent. The username and password will only be supplied to the individual via phone.
3. Assistance with set up and testing will be provided by OSEEGIB's IT Division to ensure successful connection, log in and data transfers.

#### Connection Information:

FTP Server Address: <ftp://ftp.sib.ok.gov>

Server Type: FTP/SSL (AUTH SSL) or SFTP/SSH

Connection Port: 21 for FTP/SSL 22 for SFTP/SSH

SSL Data File Transfer Open Port Range: 1024 -1050

Use **Passive Mode** for Data Connections

Use at least **128bit SSL** (SSL Enabled not Implicit SSL)

SSH Authentication Method:

Use password and public key for SFTP/SSH

\*\*\* Folder Names, User Names and Passwords will be given out over the phone only after application approval by OSEEGIB.

OSEEGIB Agency Contact Information:

IT Help Desk – Phone: 405-717-8888 Email: [helpdesk@sib.ok.gov](mailto:helpdesk@sib.ok.gov)

Signed by OSEEGIB and Consultant on the date indicated below.

FOR:  
OKLAHOMA STATE & EDUCATION  
EMPLOYEES GROUP INSURANCE BOARD

FOR:  
CONSULTANT

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Frank Wilson, Administrator

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Name, Title

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Date

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Date